

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 ROBERT M. GOGGIN,

5 Plaintiff,

6 v.

7 ENTERPRISE LEASING COMPANY-  
8 WEST, LLC, a Delaware Corporation; ABC  
9 CORPORATIONS 1-X, inclusive, BLACK  
AND WHITE COMPANIES, and DOES 1-  
XX, inclusive,

10 Defendant.

11  
12 ENTERPRISE LEASING COMPANY-  
WEST, a Delaware Corporation,

13 Third Party Plaintiff,

14 vs.

15 JAMES SIDNEY PROCTOR aka JAMES  
HOOK,

16 Third Party Defendant.

Case No. 3:17-cv-00262-HDM-VPC

ORDER

17  
18 Before the court is defendant Enterprise Leasing Company-West, LLC's  
19 ("Enterprise") motion for summary judgment (ECF No. 89). Plaintiff Robert M. Goggin  
20 has responded (ECF No. 100) and Enterprise has replied (ECF No. 103). Enterprise's  
21 motion is thus ripe for judgment.

22 **I. Background**

23 Enterprise formerly operated a car rental business at 7111 S. Virginia Street in  
24 Reno, Nevada. On September 29, 2016, James Sidney Proctor ("Proctor") rented a car  
25 from Enterprise at the 7111 S. Virginia Street location. Before renting the car, Proctor  
26 presented his driver's license. The license was facially valid and indicated that Proctor  
27 was a duly licensed driver in the state of Nevada. At the time of the rental, Proctor  
28 represented that he was duly licensed and his license was valid. Although Proctor

1 presented a facially valid driver's license, his license was in an administrative "cancelled"  
2 status because of inadequate documentation relative to Proctor's payment of his prior  
3 child support obligations and Proctor's driving privileges had been administratively  
4 suspended.

5 After renting the car, Proctor drove to his home in Fallon, Nevada. Sometime  
6 subsequent to arriving at his home, Proctor took more than his usual dose of prescribed  
7 Oxycodone. Later, in the early morning hours of September 30, 2016, Proctor struck  
8 plaintiff with the rental vehicle while plaintiff was jogging. Proctor was arrested and  
9 subsequently pled guilty to driving under the influence of a controlled substance.

10 On February 2, 2017, plaintiff initiated this action by filing a complaint in the Second  
11 Judicial District Court of the State of Nevada (ECF No. 1, Ex. 1). On April 26, 2017  
12 Enterprise filed its petition for removal (ECF No. 1). In his errata to his second amended  
13 complaint, plaintiff alleged he is entitled to damages on theories of negligent entrustment  
14 and negligence per se against Enterprise (ECF No. 40). On December 12, 2017,  
15 Enterprise filed a third party complaint against Proctor alleging it is entitled to  
16 indemnification and contribution from Proctor in the event Enterprise is found liable under  
17 plaintiff's claims (ECF No. 61). On April 23, 2018, Enterprise filed its motion for summary  
18 judgment, arguing that there are no issues of material fact in dispute and it is entitled to  
19 judgment as a matter of law on plaintiff's negligence claims (ECF No. 89). For the  
20 following reasons, Enterprise's motion is granted.

## 21 **II. Legal standard**

22 Summary judgment shall be granted "if the movant shows that there is no genuine  
23 issue as to any material fact and the movant is entitled to judgment as a matter of law."  
24 Fed. R. Civ. P. 56(a). The burden of demonstrating the absence of a genuine issue of  
25 material fact lies with the moving party, and for this purpose, the evidence lodged by the  
26 moving party must be viewed in the light most favorable to the nonmoving party. *Adickes*  
27 *v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Martinez v. City of Los Angeles*, 141 F.3d  
28 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the

1 litigation and requires a trial to resolve the differing versions of the truth. *Lynn v. Sheet*  
2 *Metal Workers Int'l Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986); *S.E.C. v. Seaboard Corp.*,  
3 677 F.2d 1301, 1306 (9th Cir. 1982).

4 Once the moving party presents evidence that would call for judgment as a matter  
5 of law at trial if left uncontroverted, the respondent must show by specific facts the  
6 existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
7 (1986). “[T]here is no issue for trial unless there is sufficient evidence favoring the  
8 nonmoving party for a jury to return a verdict for that party. If the evidence is merely  
9 colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at  
10 249-50 (citations omitted). “A mere scintilla of evidence will not do, for a jury is permitted  
11 to draw only those inferences of which the evidence is reasonably susceptible; it may not  
12 resort to speculation.” *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir.  
13 1978).

### 14 **III. Analysis**

#### 15 **a. Negligent entrustment**

16 “The key elements [of a negligent entrustment claim] are whether an entrustment  
17 actually occurred, and whether the entrustment was negligent.” *Zugel v. Miller*, 100 Nev.  
18 525, 527, 688 P.2d 310, 312 (1984). Here, there is no dispute that an entrustment actually  
19 occurred when Enterprise rented a vehicle to Proctor. Therefore, the issue is whether  
20 that entrustment was negligent. In Nevada, “[i]t is well established that to prevail on a  
21 negligence claim, a plaintiff must establish four elements: (1) the existence of a duty of  
22 care, (2) breach of that duty, (3) legal causation, and (4) damages.” *Sanchez v. Wal-Mart*  
23 *Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

24 Under Nevada law, the theory of negligent entrustment “appl[ies] where one who  
25 has the right to control the car permits another to use it in circumstances where he knows  
26 or should know that such use may create an unreasonable risk of harm to others.” *Mills*  
27 *v. Continental Parking Corp.*, 86 Nev. 724, 726, 475 P.2d 673, 674 (1970). Other  
28 jurisdictions similarly apply the doctrine of negligent entrustment to cases involving motor

1 vehicles. See *Snyder v. Enterprise Rent-A-Car Co. of San Francisco (ERAC-SF)*, 392  
2 F.Supp.2d 1116, 1121 (N.D. Cal. 2005) (“Under California law one who places or entrusts  
3 his or her motor vehicle in the hands of one whom he or she knows, or from the  
4 circumstances is charged with knowing, is incompetent or unfit to drive, may be held liable  
5 for an injury inflicted by the use made thereof by that driver.” (internal quotation marks  
6 omitted)).

7 Plaintiff argues that Enterprise had a duty to access and examine Proctor’s driving  
8 records with the DMV and that Enterprise breached that duty when it failed to do so and  
9 rented a vehicle to Proctor despite his license having been administratively “cancelled”  
10 by the DMV. Enterprise responds that it was under no duty to access and examine  
11 Proctor’s driving records with the DMV and that, under the circumstances, there are no  
12 issues of material fact in dispute that it knew or should have known that renting a vehicle  
13 to Proctor would create an unreasonable risk of harm to others. Therefore, Enterprise  
14 argues it is entitled to summary judgment on plaintiff’s negligence cause of action.

15 In support of its argument, Enterprise points to well-reasoned cases from other  
16 jurisdictions holding that rental agencies are under no duty to access and examine DMV  
17 records of prospective renters who present facially valid driver’s licenses before renting  
18 their vehicles. See, e.g. *Eaton v. Shelton*, No. 212CV232 DAK, 2014 WL 2565656, \*6  
19 (D. Utah June 6, 2014) (“there are many cases in which courts have found that rental  
20 companies do not have a duty to verify the status of a facially valid driver’s license or to  
21 otherwise investigate a renter’s driving record”); *Cousin v. Enterprise Leasing Company-  
22 South Cent., Inc.*, 948 So. 2d 1287, 2007 WL 474308 (Miss. Feb. 15, 2007) (no evidence  
23 of negligence per se under statute requiring that owner rent vehicle only to persons “then  
24 duly licensed” where rental company accepted facially valid, unexpired licenses without  
25 further verification); *Nunez v. A&M Rentals, Inc.*, 63 Mass. App. Ct. 20, 822 N.E.2d 743,  
26 2005 WL 326921 (Mass. App. Ct. Feb. 14, 2005) (rental company had no duty to verify  
27 status of license with commercially available technology to satisfy statutory requirement  
28 to rent only to holders of “a duly issued license”); *Cowan v. Jack*, 922 So. 2d 559, 565,

1 2005 WL 3763974 (La. App. 4 Cir. Dec. 21, 2005) (“the jurisprudence has recognized that  
2 ‘the possession of a valid, unrestricted driver’s license is evidence of a driver’s  
3 competency absent any evidence to the contrary.’”) (citation omitted).

4 These cases are persuasive, especially considering Nevada’s statutes governing  
5 rental vehicles. Pursuant to NRS 483.610(1), “[n]o person shall rent a motor vehicle to  
6 any other person unless the latter person is then duly licensed [under Nevada law], or, in  
7 the case of a nonresident, then duly licensed under the laws of the state or country of his  
8 or her residence . . .” NRS 483.610(2) provides that “[n]o person shall rent a motor vehicle  
9 to another until the person has inspected the driver’s license of the person to whom the  
10 vehicle is to be rented and compared and verified the signature thereon with the signature  
11 of such person written in his or her presence.” The Nevada Legislature has prescribed  
12 the duty owed when renting a vehicle. That duty is satisfied when the rental car agency  
13 inspects the driver’s license of the person to whom the vehicle is to be rented, makes  
14 certain there are no restrictions on the face of the license, and makes certain the applicant  
15 is the person depicted on the license by verifying the signature.

16 Here, it is undisputed that Proctor presented a facially valid license at the time he  
17 rented the vehicle from Enterprise. There was nothing on the face of the license that  
18 showed it had been “administratively cancelled.” It is also undisputed that Proctor did not  
19 appear unfit or incompetent to drive by way of age, intoxication, or any physical  
20 impairment at the time of the rental. It is also undisputed that Enterprise did not know  
21 that Proctor’s license had been administratively cancelled for failing to show he had paid  
22 child support nor did they know that he had previously been convicted of driving under  
23 the influence. Finally, it is undisputed that Enterprise inspected Proctor’s facially valid  
24 driver’s license and verified his signature before it rented him the vehicle. Therefore,  
25 under existing Nevada law, Enterprise was under no legal duty to conduct any additional  
26 investigation after Proctor presented his facially valid driver’s license.

27 In addition, the court concludes that there are no material issues of fact in dispute  
28 that would establish that the administratively cancelled status of Proctor’s license at the

1 time of the rental was the proximate or legal cause of plaintiff's damages. Proctor's  
2 license had been administratively cancelled for failure to show he had paid child support,  
3 not for impaired driving. There is no dispute that the cause of the accident was the fact  
4 that Proctor consumed medication sometime after he rented the vehicle and then drove  
5 the vehicle and injured the plaintiff.

6 Therefore, the court concludes that plaintiff has failed to establish that material  
7 issues of fact exist sufficient to establish that Enterprise breached its duty of care or that  
8 Enterprise's conduct was the proximate or legal cause of plaintiff's injuries.

9 **b. Negligence per se**

10 "A negligence per se claim arises when a duty is created by statute. A civil statute's  
11 violation establishes the duty and breach elements of negligence when the injured party  
12 is in the class of persons whom the statute is intended to protect and the injury is of the  
13 type against which the statute is intended to protect." *Sanchez ex. rel. Sanchez v. Wal-*  
14 *Mart Stores, Inc.*, 125 Nev. 818, 828, 221 P.3d 1276, 1283 (2009). Plaintiff's negligence  
15 per se argument is premised on an alleged violation of NRS 483.610. In its entirety, NRS  
16 483.610 provides:

17 1. No person shall rent a motor vehicle to any other person unless the latter  
18 person is then duly licensed under NRS 483.010 to 483.630, inclusive, or,  
19 in the case of a nonresident, then duly licensed under the laws of the state  
20 or country of his or her residence except a nonresident whose home state  
or country does not require that a driver be licensed.

21 2. No person shall rent a motor vehicle to another until the person has  
22 inspected the driver's license of the person to whom the vehicle is to be  
23 rented and compared and verified the signature thereon with the signature  
of such person written in his or her presence.

24 3. Every person renting a motor vehicle to another shall keep a record of  
25 the registration number of the motor vehicle so rented, the name and  
26 address of the person to whom the vehicle is rented, the number of the  
27 license of the latter person and the date and place when and where the  
28 license was issued. Such record shall be open to inspection by any police  
officer or officer of the Department.

1 Plaintiff argues that Enterprise violated NRS 483.610(1) because Proctor was not  
2 "duly licensed" at the time he rented the vehicle from Enterprise. Plaintiff also argues that  
3 he is a member of the class of persons who were intended to be protected by the  
4 enactment of NRS 483.610(1) and thus the duty and breach elements of his negligence  
5 claim have been established.

6 As set forth above, it is undisputed that Enterprise inspected Proctor's license and  
7 compared his signature to the signature on the license and determined that the license  
8 was facially valid and contained no restrictions at the time he rented the vehicle.  
9 Therefore, Enterprise complied with the requirements of NRS 483.610 prior to renting the  
10 vehicle to Proctor and is entitled to summary judgment on plaintiff's negligence per se  
11 claim.<sup>1</sup>

#### 12 IV. Conclusion

13 Based on the foregoing, the court concludes that there are no material facts in  
14 dispute for trial and Enterprise is entitled to summary judgment. Therefore, Enterprise's  
15 motion for summary judgment (ECF No. 89) is GRANTED and judgment shall be entered  
16 in favor of Enterprise and against plaintiff Robert M. Goggin. All other pending motions  
17 are DENIED as moot. The clerk of the court shall enter judgment in favor of defendant  
18 Enterprise Leasing Company-West, LLC and against plaintiff Robert M. Goggin.  
19 IT IS SO ORDERED.

20 DATED THIS 23rd day of August, 2018.

21 

22 \_\_\_\_\_  
23 HOWARD D. MCKIBBEN,  
24 UNITED STATES DISTRICT JUDGE

25  
26 \_\_\_\_\_  
27 <sup>1</sup> It is for the Nevada Legislature, not this court, to circumscribe the duty of automobile  
28 rental agencies to investigate the license status of customers. Here, the Nevada  
Legislature did so when it last amended NRS 483.610 in 1969 only requiring a facially  
valid driver's license and a signature comparison.